

1 Q And why did you make that judgment?

2 A I felt that the structure of the building itself
3 might be stronger than the structure of the elevator room.

4 Q Now, would you turn to your -- let me start again.
5 You've testified that at -- on your first visit to the Lebanon
6 site you encountered a maintenance employee up near the
7 elevator room. Is that correct?

8 A No.

9 Q Well, you talked to someone?

10 A My statement was that on one of my visits to the
11 Lebanon site I encountered a maintenance employee on the top
12 floor of the motel. I don't recall if it was the first visit
13 or the second visit.

14 Q Did you talk to anyone else at the Lebanon site on,
15 on either visit apart from the front desk? You mentioned that
16 you asked where the elevators were. Apart from that and apart
17 from the conversation you've described that you had with the
18 maintenance employee which was on the first or second, you
19 don't know which, visit, did you talk to anyone else at the
20 Lebanon site?

21 A I believe I did, yes.

22 Q And what do you recall?

23 A I was walking around the building just generally
24 familiarizing, getting familiar with the layout, the structure
25 of the building, the basement, the foundation, other

1 | electronic, other electronic uses of the building, and I, I
2 | got into a part of the building that I had trouble finding my
3 | way out of and I asked somebody how to get back to the main
4 | part of the building.

5 | Q And do you know who it was you asked? Was it an
6 | employee? Was it a guest, do you know?

7 | A I think he was a bug exterminator man, but I'm not
8 | sure. He had on -- I -- he had on an official type uniform,
9 | but I don't know that it was a hotel uniform or some other
10 | contract maintenance person.

11 | Q Now, did you -- do you recall speaking to anyone
12 | else at, at Lebanon on either occasion other than the bug
13 | exterminator man?

14 | A Well, yeah. I wouldn't characterize him as a bug
15 | exterminator man. He seemed to be a professional with a
16 | uniform that --

17 | Q Well, that's fine. I'm not, I'm not --

18 | A Maybe he wasn't working with the hotel.

19 | Q I don't care about his title.

20 | A Okay.

21 | Q But I just want to identify apart from that person
22 | and apart from the maintenance employee that you've already
23 | described and apart from your inquiry at the front desk as to
24 | where the elevators were located, do you recall any other
25 | conversations with persons at Lebanon?

1 A I don't recall any other conversations.

2 Q Now, would you turn to your deposition please, page
3 113? Do you have that before you?

4 A Yes.

5 Q And to orient you here, what the subject or
6 discussion was was on your first visit to the Lebanon site and
7 -- the Lebanon or Lancaster sites, first visit. Starting on
8 page 113, line 6, "Question: Did you speak with anyone at
9 either of the sites when you made your visit? Answer: Yes.
10 Question: Who did you speak with at the Lebanon site?
11 Answer: I guess she was a maid or somebody who cleans up the
12 rooms who directed me to the access to the roof which was
13 where we had proposed to put the antenna, the tower which held
14 the antenna and transmitter." Now, you haven't told us
15 anything today about speaking with a maid at Lebanon, have
16 you?

17 A The maid was the maintenance person that I was
18 referring to.

19 Q Oh, that's the maintenance employee?

20 A Yes.

21 Q I see. And she's the one who directed you to access
22 to the roof?

23 A Yes. She was on the top floor.

24 Q And she showed you how to get to the door to the
25 elevator room?

1 A Yes.

2 Q Did you have any further conversation with her?

3 A Just polite discussion perhaps. I don't recall any
4 further discussion with her, no.

5 Q You did discuss the nature of the roof or the
6 physical characteristics of the roof, did you?

7 A I, I don't believe I discussed that with her, no.

8 Q And you didn't discuss with her anything about
9 location of a transmitter?

10 JUDGE CHACHKIN: He said he didn't have any further
11 conversation. Let's move along. We can be spending eternity
12 talking about all the possibilities that didn't occur. I
13 mean, we've got to move this thing along at some point.

14 MR. EMMONS: Okay.

15 BY MR. EMMONS:

16 Q Mr. Gardner, I'd like to focus your attention now on
17 Lancaster.

18 A Okay.

19 Q And on your first visit to the Lancaster site what
20 did you ascertain on your first visit to the Lancaster site?

21 A It was an open industrial site on what appeared to
22 me to be a dead end paved street with the site at the, the end
23 of the paved street with a concrete plant on it.

24 Q Did you make any ascertainment concerning
25 preparation of that site or modifications of that site with

1 respect to the proposed low power television station? Again,
2 I'm referring to your first visit.

3 A First visit. It appeared to me to have buildings
4 that were -- a couple of them were fairly tall and the initial
5 application showed the transmitter and antenna and tower being
6 placed on top of a tall building. I believe it's a, a
7 conveyor belt that takes crushed stone up and drops it
8 somewhere. And the building at the top was the initial place
9 we proposed to put the transmitter and the antenna and the
10 tower.

11 Q Did you take any notes of your observations at the
12 Lancaster on your first visit?

13 A I don't believe I took any notes.

14 Q Did you later make any, any memorandum to your file
15 of your findings at Lancaster, first site -- first visit?

16 A I don't believe I made any memorandum to a file
17 regarding the first visit.

18 Q Apart from testimony that's been prepared in this
19 proceeding, are you aware of any documents today that reflect
20 your first visit to the Lancaster site?

21 A I am not aware of any documents that refer to the
22 first visit to the Lancaster site.

23 Q Before making that visit, did you alert anyone at
24 the Ready-Mixed Concrete Company that you were coming?

25 A I did not alert anyone at Ready-Mixed Concrete that

1 I was coming.

2 Q Is there any reason why you did not?

3 A I did not do it.

4 Q While you were at the site did you ask, did you ask
5 to speak to the manager at the site?

6 A The site was fairly quiet both times I was at it,
7 every time I was at it. Except for some trucks going in and
8 out. I really didn't see anybody else at the site.

9 Q So you did not speak with anyone at the site?

10 A I don't recall speaking with anybody at the site
11 when I made my visit.

12 Q Did you go inside any of the buildings?

13 A For the most part the buildings are sort of like
14 open sheds. They have a roof, but not all four walls. And
15 calling them buildings, a lot of them are mechanical
16 structures, tumblers, mixers, conveyor belts. They're large
17 structures, but they're not really buildings. So I wandered
18 around and looked at them.

19 Q Did you go inside any of the structures?

20 A I would say no. I stayed away from actually
21 physically putting myself inside any of their structures.

22 Q Did you look to see whether there was an office?

23 A I saw a building. I don't know if it's a building
24 or a trailer that appeared that it might house an office.

25 Q Did you go in the office?

1 A No.

2 Q Is there a reason you did not?

3 A The whole place seemed unoccupied except for a
4 couple of trucks that came and went while I was there, and the
5 truck drivers in the trucks were the only people that I saw.

6 Q Well, did you make an effort to see if there was
7 anyone in the office?

8 A No, I did not.

9 Q Did you bring anybody with you on your first visit
10 to Lancaster?

11 A No, I did not.

12 Q Did you make a determination of where, where your
13 transmitter would be housed?

14 A Initially I took the suggestion from Greg Daly that
15 it should be housed at the top of one of the tall structures
16 and the antenna and tower placed on top of it. That was in
17 the first visit.

18 Q Say again?

19 A That was at the time of the first visit.

20 Q And when or in what form had Mr. Daly made that
21 suggestion?

22 A I believe it was part of a drawing which was part of
23 the application for the Lancaster construction permits.

24 Q Did you determine whether there was an adequate
25 power supply at the site to operate your station?

1 A They had big electric lines right to the perimeter
2 of the site so, again, I felt that usually the cheapest and
3 least adversarial way down the road to put electricity to a
4 transmitter is to just have you own meter from the power
5 source. So, yes, I felt that we could put our own meter in
6 and put a drop in.

7 Q Did you determine whether the roof was strong enough
8 to accommodate the tower that you had in mind?

9 A I didn't climb to the top of the structure --

10 Q So you --

11 A -- any structure.

12 Q So you made no determination about whether the roof
13 was strong enough?

14 A In looking at it initially it seemed like a large
15 steel structure and I thought that if it was steel the whole
16 way up that there would be a way to mount a tower to the steel
17 structure.

18 Q But you didn't talk to anybody about, about that or
19 make any specific determination?

20 A I didn't talk to anybody about that and I did not
21 -- I made the determination at the first visit that it was
22 strong enough to support it.

23 Q You just made that determination by looking at it?

24 A Looking at it, yeah.

25 Q From a distance?

1 A It's got to be 40 or 50 feet high and I was at the
2 bottom.

3 Q Was the roof flat or slanted?

4 A I don't recall.

5 Q Did you determine where the satellite dish would go?

6 MR. SCHAUBLE: Objection. Is there any foundation
7 that there was going to be a satellite dish?

8 MR. EMMONS: Mr. Gardner, did you make any
9 determination as to location of a satellite dish?

10 MR. SCHAUBLE: Objection, no --

11 JUDGE CHACHKIN: There's an objection. What is --

12 MR. EMMONS: I'm sorry.

13 JUDGE CHACHKIN: What's the foundation for this?
14 Was there a proposal for a satellite dish?

15 BY MR. EMMONS:

16 Q Mr. Gardner, would you turn to TBF Exhibit 211,
17 please? Do you have that?

18 A Yes, I do.

19 MR. EMMONS: The record reflects in other testimony
20 given which is in the record, Your Honor, Mr. Harold Etsel's
21 testimony, that this document which is a two page document
22 entitled "Low Power T.V. Construction Cost" was prepared -- it
23 was authored by Mr. Etsel.

24 BY MR. EMMONS:

25 Q And, Mr. Gardner, would you turn to page 2 of the

1 document?

2 A Yes.

3 Q Do you see down toward the bottom the word "studio
4 location Lancaster transmission site?"

5 MR. SCHAUBLE: Your Honor, I object on the basis of
6 foundation and until it's established that the witness saw
7 this document --

8 JUDGE CHACHKIN: It's irrelevant whether he saw the
9 document. It's a simple question of whether -- if they were
10 proposing an antenna, the question is did he make, did he make
11 any determination about where the antenna would be placed.

12 BY MR. EMMONS:

13 Q Mr. Gardner, do you see the item toward the bottom
14 of that second page, the word SAT., which I'm inferring means
15 satellite, SAT Dish and Equipment? Do you see that?

16 A I see that.

17 Q Were you aware that Raystay contemplated installing
18 a satellite dish and equipment at the Lancaster site?

19 A I don't recall being made aware that Raystay was
20 proposing to install a satellite dish at the Lancaster
21 transmitter site.

22 Q I take it then it's fair to say that when you
23 visited the Lancaster site you didn't make any determination
24 about where a satellite dish might go? Is that correct?

25 A That's correct.

1 Q Now, do you also see that the -- the same reference
2 in TBF Exhibit 211, page 2, the reference to Studio and
3 Origination Equipment at the Lancaster location, toward the
4 bottom of page 2, just above Satellite Dish?

5 A Yes.

6 Q And my question to you is were you aware that
7 Raystay was contemplating building a studio at the Lancaster
8 location?

9 MR. SCHAUBLE: What's the time frame to this
10 question?

11 MR. EMMONS: The time frame is at any time when Mr.
12 Gardner was making ascertainties of site preparation work and
13 modifications.

14 MR. GARDNER: Okay. Could you repeat your question?

15 BY MR. EMMONS:

16 Q Were you aware at the time that you were, according
17 to your testimony, visiting the Lancaster site for purposes of
18 making site preparation and modification determinations, were
19 you aware that Raystay contemplated locating a studio with
20 origination equipment at the, at the Lancaster transmitter
21 site?

22 A Yes, although I think your characterization is as
23 -- of a studio that is fixed at the site and my perception of
24 the studio was as origination equipment to visit local
25 colleges, schools, etc. to originate equipment in the

1 Lancaster area on a mobile basis. So, to that extent, the
2 studio would be in a truck rather than in a building at the
3 site.

4 Q Well, will you agree that TBF Exhibit 211, page 2,
5 indicated studio location as being the Lancaster transmission
6 site?

7 A That's what this says.

8 Q I take it from what you've just testified that while
9 at the Lancaster site you did not make any determination about
10 where a studio might be constructed or where origination
11 equipment might be placed at that site?

12 A I just did say where I expected the equipment to be
13 placed. I expected it to be in a truck.

14 Q Not at the Lancaster site then?

15 A The only time it might be at the site might be if it
16 were parked there if permission were granted to park it there.

17 Q Now, did you -- how much time did you spend looking
18 at the Lancaster site on your first visit there?

19 A I think I spent about -- between 30 and 60 minutes
20 at the Lancaster site the first time I visited there.

21 Q Just walking around?

22 A Yes.

23 Q Were you on the premises of the company, do you
24 know?

25 A Yes.

1 Q Did anybody ask you what you were doing there?

2 A No.

3 Q Did you discuss with, with anyone at Raystay what
4 you had found at the Lancaster site on your first visit?

5 A No, I did not.

6 Q Now, I want to ask you now about your second visit
7 and, first, your second visit to the Lebanon site.

8 A Second visit to the Lebanon site.

9 Q That's the Quality Inn hotel.

10 A Yes. Yes.

11 Q Now, when was that?

12 A Subsequent to Tom Riley's site inspections.

13 Q How much subsequent?

14 A Fairly soon thereafter.

15 Q How soon thereafter?

16 A Within -- before there was any snow.

17 Q How is it you are able to relate the time sequence
18 as relating to Tom Riley's site visits?

19 A I made the second set of inspection visits to re-
20 acclimate myself, to look at specially the Lancaster site
21 again because of his professional standing which I respected
22 and his very strong statements to the effect that he did not
23 -- he could not recommend that site to Trinity.

24 Q Did you -- you said that this was before there was
25 any snow. Was it after December of 1991?

1 A I don't recall the exact time of the visit. I just
2 know that it was after Tom Riley visited it, but before there
3 was snow on the ground that stayed.

4 Q And did you visit -- on the second occasion of your
5 visits to the Lancaster and Lebanon sites, were they on the
6 same day? I know I asked this question before, but you've now
7 indicated that there was an event that prompted you to go back
8 to both sites, and my question is whether on the occasion that
9 you went back did you go back on the same day?

10 A I did.

11 Q Now, what was the purpose of going back, back to the
12 Lebanon site?

13 A I was going specifically to the Lancaster site but,
14 since I was driving the whole way down there, I thought I
15 would swing by the Lebanon site and take a look at it again.

16 Q Was this while you were still negotiating with
17 Trinity for the sale of those permits?

18 A It's possible that it was. It was in that time
19 frame.

20 Q Well, what was the point of going back to look at
21 the site if you were negotiating with Trinity to sell the
22 permits?

23 A Well, first of all, I wanted to look specifically at
24 the Lancaster site and, secondly, if Trinity was going to back
25 out of the deal because we couldn't deliver a good site for

1 | them in Lancaster, I wanted to be able to talk as
2 | intelligently as I could about the site.

3 | Q Well, did you ever hear from Trinity after Mr. Riley
4 | told you about his problems with the site? Did you ever hear
5 | from anybody at Trinity initiating a discussion of the site
6 | or, or discussion of the adequacy of the Lancaster site?

7 | A I don't recall if I had any discussions with anybody
8 | at Trinity about the adequacy of the sites or not after Mr.
9 | Riley's recommendation.

10 | Q But with respect to Lebanon, there was no -- nothing
11 | Mr. Riley said about the Lebanon site, about his view of the
12 | Lebanon site, that led you to believe that Trinity had any
13 | problem with that site? Am I correct?

14 | A I don't recall any problems that he had -- Mr. Riley
15 | had with the Lebanon site.

16 | Q In fact, he told you, did he not, that he was
17 | generally favorably impressed with the Lebanon site?

18 | A He did.

19 | Q So it was nothing about Mr. Riley's comments that
20 | caused you to go back and visit the Lebanon site? Is that
21 | correct?

22 | A I don't recall any comments by Mr. Riley that would
23 | have made me go back to see the Lebanon site.

24 | Q Now, on these -- this second set of visits to these
25 | two sites, did you call ahead to either site to alert anybody

1 you were coming?

2 A I did not.

3 Q Did you bring anybody with you?

4 A I did not.

5 Q Specifically, did you bring an engineer to look at
6 the Lancaster site?

7 A I did not.

8 Q What did you do when -- let me talk about the
9 Lebanon site now. This question is now confined to the
10 Lebanon site. What did you do when you went back to the
11 Lebanon site for the second time?

12 A I parked the car and got out and went into the
13 building and got in the elevator and went up and took a look
14 in the mechanical room.

15 Q And then what?

16 A I determined that there didn't seem to be any
17 changes of a nature which would impinge upon the space that I
18 had seen before where I expected to put the transmitter, and
19 that was, that was about it. I looked around to see if there
20 were any changes that might impact the placement of a
21 transmitter or antenna or anything like that, the transmitter
22 or the tower.

23 Q Did you speak to anyone at the Lebanon site on that
24 occasion?

25 A I may have. The people that I talked to before --

1 that I said I talked to before, some of those conversations
2 could have been at the second visit rather than the first, the
3 maintenance man who helped me find my way. Yeah, the first
4 time I visited would have been when I talked to the person at
5 the desk that showed me where the elevators were. The
6 elevators are kind of hidden. The second visit I knew where
7 the elevators were. So I would say that it's possible that I
8 did not speak to anyone on the second visit at the Lebanon
9 site.

10 Q The maintenanceman that you referred to, that's the
11 -- that was the --

12 A The bug man. He could have been a bug man. He had
13 on his own clothes.

14 Q That's the person who you got lost and asked how to
15 get out?

16 A Yes.

17 Q Okay. Now, did you, did you make any determinations
18 about the site that you hadn't made on your first visit?

19 A I don't recall making any determinations different
20 from my first visit on my second visit.

21 Q Did you mention to anyone else at Raystay what you
22 found at your second visit?

23 A I don't recall making any -- having any discussion
24 with anybody at Raystay about my second visit.

25 Q Did you make any notes concerning your second visit

1 to Lebanon?

2 A I don't recall making any notes about my second
3 visit to the Lebanon site.

4 Q And I take it also you don't recall making any
5 memorandum to the file later on about your second visit to
6 Lebanon?

7 A I don't recall making any memorandum to a file about
8 my second visit to the Lebanon site.

9 Q And apart from written testimony in this case, I
10 take it you don't know of any documents now that reflect your
11 second visit to the Lebanon site?

12 A I don't know of any documents that would reflect
13 anything about my visit to the -- second visit to the Lebanon
14 site.

15 Q Now, with respect to your second visit to the
16 Lancaster site which you testified was on the same day as your
17 second visit to the Lebanon site, did you, did you tell anyone
18 at Raystay about Mr. Tom Riley's comments to you about the
19 dust problem?

20 A I believe I did.

21 Q Who did you tell?

22 A I believe I told Lee Sandifer.

23 Q And what did you tell him?

24 A I told him generally -- my recollection is that I
25 told him about Tom Riley's visits to both sites and that he

1 was impressed with Lebanon and not impressed with Lancaster
2 and that the problem was dust.

3 Q Did -- any when did you tell Mr. Sandifer that?

4 A Subsequent to Tom Riley's phone conversations with
5 me.

6 Q In the same general time frame?

7 A I would expect that I told him at -- sometime
8 between Tom Riley's discussions with me and the termination of
9 negotiations with Trinity.

10 Q Because it would have been irrelevant once the, once
11 the negotiations were ended? Correct?

12 A No, but I just -- I try to keep Lee Sandifer
13 apprised of what I'm doing.

14 Q What reaction, if any, did Mr. Sandifer have to the
15 information about the dust problem?

16 A I don't recall that he had any reaction to it other
17 than to acknowledge that I told him.

18 Q Did -- on your second visit to the Lancaster site,
19 did you call ahead to the, to the Ready-Mixed Concrete Company
20 to tell them that you were coming?

21 A I did not.

22 Q And did you bring anyone with you on that visit?

23 A I did not.

24 Q And describe what you did when you went back on the
25 second visit to Lancaster.

1 A I parked the car and got out and walked over to the,
2 the structure that had the big conveyor belt on it -- I think
3 it's a conveyor belt -- and took a look at it because that was
4 what Tom Riley said would not support a tower with an antenna,
5 and looked around at the other buildings at the site and made
6 a determination that probably the easiest way to solve the
7 problem was to put up a self-supporting tower to hold the
8 antenna.

9 Q You testified that you made this second visit to
10 Lancaster so that you would be able to respond to any
11 discussion with Trinity that might ensue about the dust
12 problem at the site? Correct?

13 A Correct.

14 Q Why didn't you take an engineer with you?

15 A Well, Mr. Riley's an engineer and I knew his
16 findings would be available and I knew his recommendations
17 would be available and, in fact, as we're sitting here now I
18 seem to recall he made a suggestion about alternative sites
19 that had existing towers where he might look to place the
20 station rather than at the Ready-Mixed site. He talked about
21 an AM station. In any case, I knew that he had alternative
22 ideas for alternative sites. I was looking at the Ready-Mixed
23 site still because I know AM towers usually won't support an
24 antenna structure for anything, let alone a big antenna
25 structure like a T.V. antenna. So I figured if we're going to

1 have to build a tower anyway, the easiest place to start is
2 going to be at the site that you've already started to work
3 with and have talked to the Commission about and has been
4 tentatively approved by the Commission, so I looked at the
5 Ready-Mixed site to see if a tower could be fitted in there
6 somehow to solve the two problems that Mr. Riley talked about,
7 one about which he didn't think the structure would support a
8 tower and antenna, and the second one which was dust, and I
9 figured if you got way from Ready-Mixed's equipment that the
10 dust would certainly be minimized.

11 Q Well, you've talked about building a self-sustaining
12 tower. You made the judgment that that would be a way to
13 avoid the structural problem that Mr. Riley had identified
14 about whether the roof was strong enough? Am I correct about
15 that?

16 A Yes.

17 Q Where did you determine you were going to put such a
18 self-sustaining tower?

19 A On a portion of the site that didn't seem to be used
20 by anything that Ready-Mixed was doing.

21 Q Did you talk to anybody at Ready-Mixed about doing
22 that?

23 A No.

24 Q You didn't have any idea of whether Ready-Mixed
25 would permit a tower at that point, did you?

1 A I did not.

2 Q In fact, did you know that Ready-Mixed even owned
3 the particular piece of land that you had in mind?

4 A Ready-Mixed has their site -- the boundaries are --
5 while I don't know if they're marked explicitly, the
6 boundaries of the site to me seemed to include the area that
7 we were -- that I was looking at.

8 Q But you made no effort to verify that?

9 MR. SCHAUBLE: Objection, Your Honor, relevance.

10 JUDGE CHACHKIN: Sustained.

11 MR. EMMONS: Your Honor --

12 JUDGE CHACHKIN: We're dealing with a misrepresen-
13 tation issue. We're not dealing with a suitability issue.

14 MR. EMMONS: No. Quite right, Your Honor, but the,
15 the witness has testified in the statement that's at issue
16 that it was -- the alleged misrepresentation is that
17 determinations were made concerning site preparation and
18 modifications.

19 JUDGE CHACHKIN: Well, he's told you what he's done.
20 I mean, you could ask him a hundred questions about what he
21 didn't do, but the question -- he's told you what he's done in
22 connection with site preparation. We'll be recessed until
23 9:00 a.m. Monday morning.

24 (Whereupon, the hearing was adjourned at 3:55 p.m.).

25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.

Name AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Docket No.

WASHINGTON, D.C.

Place

JANUARY 21, 1994

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 4664 through 4809, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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